

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Date: [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of the State of [REDACTED] for the specific purpose of providing a [REDACTED]ly [REDACTED], medically uninsured, medically underserved and socioeconomically disadvantaged populations and geographical areas" within the meaning of section 501(c)(3) of the Code.

Your bylaws provide that the Board of Directors shall consist of [REDACTED]. The term of office shall be [REDACTED] years with no limit upon consecutive terms. However, you have indicated that you are willing to expand your Board of Directors to include more individuals from the community.

Your Board of Directors is comprised of [REDACTED], [REDACTED] who has provided medical treatment to the [REDACTED] for the past [REDACTED] years; [REDACTED], a neighborhood [REDACTED] with experience in medical marketing and business management; and [REDACTED], a local resident with marketing and health care business management experience.

On Form 1023, you state that [REDACTED] would serve as your [REDACTED] a for profit corporation. In your [REDACTED]

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[REDACTED]

letter dated [REDACTED], you state that since the initial application you have made the following administrative changes:

i. [REDACTED] will serve as your President and Chairperson. He will not serve as your [REDACTED]

ii. [REDACTED] will continue to serve as Medical Director of [REDACTED]. You state that as sole [REDACTED]

As of [REDACTED] replaced [REDACTED] is a physician associate of [REDACTED] on the surgical staff at [REDACTED]

You state that [REDACTED] and [REDACTED] may periodically provide services to you in the capacity of attending physician. Your Board of Directors has resolved that, in the event that there are no physicians available to staff the [REDACTED] the [REDACTED] should remain on call, serve as the temporary attending physician, and can be compensated at prevailing fair market rates. No other members of the Board will provide services to the organization in another capacity.

You state that currently your administrative office is shared by the administrative offices of [REDACTED]

You state that your sources of support will be from private donations, grants, etc. You are presently researching the types of assistance you are eligible to receive. You state that you have applied for and received a [REDACTED] to be used at the [REDACTED]. You propose to apply for [REDACTED]. Your proposed budget reflects income from private foundations, subletting of space to laboratory, radiology, and pharmacy and from Medicare and Medicaid recipients (2%).

As fundraisers, you propose to produce an annual [REDACTED] and mass mailings of literature to solicit donations.

You state that you have received no income to date. Expenses have been paid out as an interest free loan from [REDACTED]

You state that you will provide well care check ups, immunizations, prenatal and obstetrical care, general surgical care, and early periodic screening diagnosis. You will also

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provide treatment for addiction and dependency to tobacco, alcohol, and illicit substances. The primary care physician will attend to all of the above except addiction and dependency to alcohol and illicit substances which will be referred to established programs. Clients will be drawn from the immediate community, church congregations, and families and friends of clients.

You state that your staff, the [REDACTED] and their salaries will be a full time equivalent attending physician and general surgeon, [REDACTED] a nurse administrator ([REDACTED]) with experience as both a surgical technician and a health care business administrator, \$[REDACTED]; and medical assistants (2), \$[REDACTED] each. You also state that [REDACTED] may periodically provide services as the attending physician. As stated previously, you state that Dr. Hubbard will be compensated at prevailing fair market rates. The pharmacists, laboratory and radiology technicians will be provided by the independent contractors for such services.

In your letter dated [REDACTED] you state that the Executive Officers and their compensations have changed as follows: [REDACTED] - \$[REDACTED]

[REDACTED] - \$[REDACTED]  
[REDACTED] - \$[REDACTED]  
[REDACTED] - \$[REDACTED]  
[REDACTED] - \$[REDACTED]

You state that you have elected to remove [REDACTED] from the paid position (\$[REDACTED]) as Executive [REDACTED] because of his relationship to [REDACTED] which you propose to contract with for services.

You state that none of the executive officers are interested persons with respect to any entity you propose to contract with for services. This is a change from your initial submission which indicated that executive officers would receive compensation for their services and would also receive compensation as contractors.

You also state that the Executive Director of [REDACTED] will not be filled until you have opened your third [REDACTED]

You did not submit information on the relationship of these employees with [REDACTED]

On Form 1023 you state that you will recruit volunteers with an affiliation to [REDACTED] to provide [REDACTED] and support to your patients. The volunteers you propose to recruit from [REDACTED]

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[REDACTED]

specialty care services for the medically uninsured. Those medically uninsured groups will require free or significantly reduced fees for services rendered. You state that you will request that [REDACTED] agree to provide a certain percentage of patients with free or ability to pay scale rates for specialty care such as [REDACTED]

You will market and advertise your programs through television public access channels; radio; newspapers; church television channels, radio and newspapers; and direct mail. You state that you have not entered into any marketing and advertising contracts yet.

Recipients of services will be required to pay based upon an ability-to-pay scale established by the [REDACTED]

You state that the general management for your activities will be performed by [REDACTED] the for profit corporation. In your letter dated [REDACTED] you state that:

- i. [REDACTED] and [REDACTED]
- ii. [REDACTED] whose services include health care in the following areas: general medical practice, pediatrics, ophthalmology, OB-GYN, and orthopedic specialist.
- iii. [REDACTED] also provides health care management services which include day to day operation of the [REDACTED]
- iv. [REDACTED] its billings and collections services to [REDACTED]. There is no information regarding [REDACTED] relationship with [REDACTED] and its owners, directors and officers and you and your directors and officers.

Your proposed budget for [REDACTED] includes \$ [REDACTED] for [REDACTED] [REDACTED], which represents billing and collection activity contracted to [REDACTED]. You state that [REDACTED] of gross collections. You expect gross collections of \$ [REDACTED] from [REDACTED] and [REDACTED].

With respect to a management agreement and/or specific terms of a management agreement between [REDACTED] [REDACTED] draw from his ownership and management [REDACTED]

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[REDACTED]  
expertise as [REDACTED]  
the day to day operations of [REDACTED] as its  
[REDACTED] There is no specific  
contractual management agreement written between [REDACTED]  
[REDACTED]

You state that you are associated with [REDACTED]  
[REDACTED] who will meet your radiology needs at low  
prices; [REDACTED] who will provide  
laboratory services at reduced rates; and [REDACTED] which  
offers comprehensive pharmaceutical and medication delivery  
services.

You state that [REDACTED]  
[REDACTED] that provide full radiological diagnostic procedures.  
[REDACTED] is owned by [REDACTED], other  
than a business relationship, with you and your directors and/or  
officers. Pursuant to the contract, [REDACTED] will provide a  
supervising physician radiologist who will perform all  
professional and technical procedures, employ other staff  
persons, physicians, technicians, receptionists, etc. to  
effectuate the performance of those procedures. [REDACTED] will charge  
a consulting fee, as indicated in a schedule, for each service  
provided. You will sublet space in your facility to this  
corporation.

You state that [REDACTED] is a full service clinical laboratory  
partnership in existence since [REDACTED] owned by [REDACTED]  
[REDACTED] who are not related in any manner to you or any of  
your directors and/or officers. [REDACTED] will provide the services  
described in an attached exhibit and will charge the fees  
stipulated on the exhibit. Laboratory fees appear to be on a  
sliding fee schedule. [REDACTED] agrees to devote [REDACTED]  
to the performance of services for you. You will sublet space in  
your facility to this corporation.

You will contract for [REDACTED].

[REDACTED] You state that there is no relationship  
between the owners and you and your directors and/or officers.  
Pursuant to the contractor agreement submitted your costs will be  
\$ [REDACTED] less [REDACTED] per prescription with  
an open formulary. You state that these rates are consistent  
with the state medicaid reimbursement schedule. You are  
budgeting for [REDACTED] new patients and [REDACTED] follow-up patients per  
month, who will require approximately [REDACTED] prescriptions and  
[REDACTED] prescriptions respectively. [REDACTED] agrees to  
devote a minimum of [REDACTED] hours per month to the performance of

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[REDACTED]

services to you. You will sublet space in your facility to this corporation.

Regarding the subletting agreements between you and the radiology, pharmacy, and laboratory providers, you state that there are no contracts yet. Repairs on the site are being made.

Regarding entering into contracts with private corporations, insurance companies, HMOs, PPOs, etc. to provide your services, you state that after qualifying for tax exempt status and raising sufficient funds to be a viable business corporation, you hope to apply to contract with [REDACTED]

[REDACTED] as an individual provider of services. Therefore, it appears that this number is not applicable to you.

You state that you have no contractual arrangements at this time with the [REDACTED].

Regarding your relationship with churches, you state that you are closely associated with [REDACTED]

[REDACTED] You state that you have established an alliance with the churches. The churches have agreed to commit physical space for [REDACTED]. Each church will assign a volunteer representative to help administrate its business affairs with you. Each church will dedicate a space for the [REDACTED], wherein potential [REDACTED] can place their identifying data and/or any donations, gifts or contributions to you. Each church will distribute literature describing the services provided and the locations of the [REDACTED]. You state that there is no literature available yet.

You have submitted a copy of a preliminary rental/lease agreement between you and [REDACTED]. You agreed to pay \$[REDACTED] as a down payment and security deposit for property located at [REDACTED] for the period of [REDACTED] through [REDACTED]. You state that during this time, satisfactory rental terms and conditions must be agreed upon. However, any future lease price will not exceed \$[REDACTED] per month. Facilities will be for a multi-specialty [REDACTED] which will include [REDACTED]. The agreement states that you will sublet space to for-profit ancillary health care businesses such as radiology, pharmacy, and laboratory.

Regarding educational activities, you state that no specific educational programs have been developed to date. You plan to

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conduct patient education on health care issues of disease, prevention and medication.

Section 501(c)(3) of the Code provides for the exemption from federal income tax, as provided under section 501(a), of organizations organized and operated exclusively for, among others, charitable or educational purposes no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(2) of the Income Tax Regulations provides, in part, that the term "charitable" is used in its generally accepted legal sense.

Section 1.501(c)(3)-1(a)(1) of the regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(a)-1(c) of the regulations defines "private shareholders or individuals" as persons having a personal and private interest in the activities of the organization.

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[REDACTED]

In Revenue Ruling 69-545, 1969-2 C.B. 117, the Service established the community benefit standard as the test by which the Service determines whether a hospital is organized and operated for the charitable purpose of promoting health. This revenue ruling establishes a "facts and circumstances test" to measure private versus public benefit. Although the revenue ruling discusses the community benefit standards to be applied to an exempt hospital, the operation of other health organizations must meet the requirements applicable to the particular services being provided. Therefore, an organization that provides medical services on an outpatient service basis must, among other factors, be controlled by a Board composed of civic leaders. In Situation 2 of the revenue ruling, five doctors who owned a for-profit hospital sold at fair market value their interest in the hospital to a nonprofit hospital which they controlled. Based on the facts and circumstances presented in situation 2, the new nonprofit hospital is not exempt because of excessive private benefit to the five doctors. The application of the community benefit standard of Revenue Ruling 69-545, supra, to exempt hospitals and other exempt health care organizations was sustained in Eastern Kentucky Welfare Rights Organization v. Simon, 506 F.2d 1278 (D.C. Cir. 1974), vacated on other grounds, 426 U.S. 26 (1975), and in Sound Health Association, 71 T.C. 158 (1978), acq., 1981-2 C.B. 2.

Revenue Ruling 69-266, 1969-1 C.B. 151, provides that an organization formed and controlled by a doctor of medicine, "hired" to conduct research programs consisting of examining and treating patients who are charged the prevailing fees for services rendered, is not exempt under section 501(c)(3) of the Code. Under the specific facts of the situation described, the ruling states, in part, that the operation of the medical practice by the organization does not differ significantly from the private practice of medicine for profit. The organization's primary function is to serve the private interest of its creator rather than a public interest.

You are similar to the organization described in Revenue Ruling 69-266, in that you were created by and propose to employ a [REDACTED], who will be paid for his services at prevailing market rates. Since many of the patients you plan to treat will be [REDACTED] or patients who can only pay reduced charges, if [REDACTED] treated these patients and collected the fees directly, he would receive below the prevailing market rate for his services. By providing the same services to the same patients as your employee, he will be able to utilize your operations to increase or sustain the level of income he realizes from providing services to such patients. This benefits [REDACTED]

[REDACTED] See section 1.501(c)(3)-1(d)(1)(ii) of the



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regulations. Further, since [REDACTED] is in a position of control or authority in relation to you, the use of your income and assets for his personal benefit violates the proscription against private inurement contained in section 501(c)(3) of the Code. In addition, since providing private benefit to [REDACTED] is a substantial nonexempt purpose, you are barred from exemption by section 1.501(c)(3)-1(c)(1) of the regulations and the Better Business Bureau case, supra.

We also conclude that you are not organized and operated so as to satisfy the community benefit standard of Revenue Ruling 69-545, supra, because you do not have a board comprised of independent civic leaders. Rather, your board is comprised of persons deriving their livelihoods from for-profit activities related to the provision, marketing, or management of health care. Although you have indicated a willingness to expand your board, your board as presently constituted does not provide adequate safeguards against serving the private interests of your board members, all of whom are in positions to benefit by providing their business or professional services to you.

Based on the above, we conclude that you are neither organized nor operated exclusively for charitable purposes. Consequently, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted

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[REDACTED]

administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

[REDACTED]

If you wish to FAX information to us, our FAX number is

[REDACTED]

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]

[REDACTED]